

**REMARKS/ARGUMENTS**

Petition is hereby made under the provisions of 37 CFR 1.136(a) for an extension of three months of the period for response to the Office Action. The enclosed cheque includes the prescribed fee.

The Examiner indicated that claim 3 was objected to as depending on rejected claims. Claim 3 has been rewritten in independent form. Claims 1, 2, 4 and 15 to 18 have been deleted. Claims 5, 6, 8, 9, 10, 11, 14 and 20 have been made dependent on claim 3. Claim 7 is dependent on claim 6, claim 12 is dependent on claim 11, claim 13 is dependent on claim 12 and claim 21 is dependent on claim 20. It is submitted that all claims remaining pending in this application are in an allowable form.

The deletion of claim 1 is not to be construed as acquiescence on the part of the applicant to the position taken by the Examiner and the applicant reserves the right to pursue such claim and claims dependent thereon in a continuation application.

The Examiner's withdrawal of several prior objections/rejections is much appreciated, including:

- (a) objection to the disclosure for informalities
- (b) rejection of claim 3 under 35 USC 112, first paragraph
- (c) rejection of claim 19 under 35 USC 112, second paragraph
- (d) rejection of claims 3 and 4 under 35 USC 103(a) with respect to claim 3.
- (e) provisional rejection of claim 3 under 35 USC 101 with respect to the claims of copending Application No. 09/213,770
- (f) rejection of claims 1, 2, 5 to 16 and 20 under 35

The Examiner maintained the prior objection to the specification with respect to the use of the trademark "Fluzone". The Examiner indicated that the objection was maintained since there is no generic terminology accompanying if each instance of use of the term "Fluzone" and that two instances of use of the term apply with no capitalisation or ® mark and with no generic terminology.

In this regard, generic terminology has been added to page 4, line 21, page 17, lines 15, 23 and 24 and the ® symbol has been added to the term "Fluzone" in line 23 and 24 on page 17. It is submitted the objection to the disclosure with respect to the use of the trademark Fluzone® has been overcome.

The Examiner maintained several rejections in the Office Action. However, having regard to the amendments made to the claims to be dependent on claim 3, now rewritten in independent form, it is submitted that the following rejections have been obviated.

- rejection of claims 1, 2, 5 to 18 and 20 under 35 USC 103(a) as being obvious over Cates US in view of Smith and Webster
- rejection of claims 1, 2, 5 to 18 and 20 under 35 USC 103(a) as being obvious over Cates PCT in view of Smith and Webster
- rejection of claims 1, 2, 4, 6 to 14 and 20 under 35 USC 103(a) as being obvious over Cates US or Cates PCT and further in view of Payne
- rejection of claim 4 under 35 USC 103(a) as being unpatentable over Cates PCT in view of Andrianov
- rejection of claims 1, 2, 5 to 16 and 20 under 35 USC 103(a) as being unpatentable over Cates US or Cates PCT and further in view of Huebner

- rejection of claims 20 and 21 under 35 USC 103(a) as being unpatentable over Cates US in view of Smith and Webster et al or in view of Huebner and further in view of Murry et al
- rejection of claims 20 and 21 under 35 USC 103(a) as being unpatentable over Cates US or Cates PCT in view of Smith and Webster or in view of Huebner and further in view of Potash
- rejection of claims 20 and 21 under 35 USC 103(a) as being unpatentable over Cates US in view of Smith and Webster or in view of Huebner and further in view of Hall et al, Crowe, Groothuis and Falsey
- rejection of claims 1, 2, 4, 6 to 21 under 35 USC 103(a) as being obvious over claims 1 to 9, 13, 15 to 21, 23 and 26 copending Application No. 09/950,655 in view of Smith, Webster, Payne and Murry
- provisional rejection of claim 1, 2, 4 to 10, 12 to 16, 20 and 21 under 35 USC 101, as claiming the same invention as that of claims 1, 3 to 11, 13 to 18 and 20 of copending Application No. 09/213,770
- rejection of claims 1, 2, 4 to 16, 18, 19, 20 and 21 under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 1 to 9 and 13 of US Patent No. 67,020,182 in view of Smith et al and Payne
- rejection of claims 1, 2 and 5 to 21 under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 6 to 16 of US Patent No. 6,309,649 in view of Smith et al or Palese et al.
- provisional rejection of claims 1, 11, 15 and 17 to 19 under the judicially-created doctrine of obviousness-type double patenting as

being unpatentable over claims 1, 3 to 11, 13 to 18 and 20 of copending Application No. 09/213,770 or over these claims in view of Smith or Palese

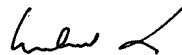
- provisional rejection of claims 1, 2, 4 and 6 to 21 under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 1 to 9, 13, 15 to 21, 23 and 26 of copending Application No. 09/950,655 in view of Smith, Webster, Payne and Murry.

Having regard to the changes made to the disclosure and claims, it is believed that all outstanding issues have been attended to. However, if one or more issues remain, the Examiner is urged to contact the applicants representative, Mr. Michael Stewart, at the number given below, in order to resolve any such issues.

Entry of this Amendment after Final Action is requested, in that the application is now placed in condition for allowance. If the Examiner believes one or more issues remain outstanding, the Amendment nevertheless should be entered, since the claims thereby are placed in better condition for appeal or the issues for appeal are reduced.

It is believed that this application is now in condition for allowance and early and favourable consideration and allowance are respectfully solicited.

Respectfully submitted,



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